

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,
Plaintiff,
v.
ROY H. MURRY,
Defendant

NO: CR-11-6037-RMP

ORDER DENYING DEFENDANT'S MOTION FOR RECONSIDERATION

ROY H. MURRY,

Defendant.

Pending before the Court is Defendant Roy Murry's "Motion to Reconsider

July 15 Order Denying Motion to Suppress and Memorandum in Support,” ECF

No. 44, filed on June 30, 2011. Having reviewed Defendant's motion and

memorandum, ECF No. 44, and the Government's response, ECF No. 46, the

Court is fully informed

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Mr. Murry is charged with two counts of possessing a weapon on federal property in violation of 18 U.S.C. §930(a), a Class A misdemeanor offense. On June 30, 2011, Mr. Murry moved to suppress all evidence obtained following disclosure of what Mr. Murry asserts is privileged information by his mental health

1 provider. Mr. Murry argued that the disclosure amounted to an illegal search
2 under the Fourth Amendment of the United States Constitution. Mr. Murry further
3 argued at oral argument that the officers conducted an unconstitutional seizure
4 when Mr. Murry was arrested. The Court heard oral argument on the motion on
5 July 13, 2011, but did not hold an evidentiary hearing. The Court then denied Mr.
6 Murry's suppression motion in a written order issued on July 15, 2011. ECF No.
7 32.

8 Although the Federal Rules of Criminal Procedure do not expressly
9 authorize the filing of motions for reconsideration, "numerous circuit courts have
10 held that motions for reconsideration may be filed in criminal cases." *United States
11 v. Hector*, 368 F.Supp.2d 1060, 1063 (C.D.Cal.2005), *rev'd on other grounds*, 474
12 F.3d 1150 (9th Cir.2007).

13 The Court, therefore, looks to the standards set by Fed. R. Civ. P. 60(b)
14 (Relief from a Judgment or Order) criteria by which to determine whether there is
15 any merit to Mr. Murry's motion for reconsideration. *United States v. Clark*, 984
16 F.2d 31, 33-34 (2d Cir.1993) (noting that courts have treated motions for
17 reconsideration in criminal cases as the equivalent of a Rule 59(e) or 60(b)
18 motion). Rule 60(b) provides that a court may relieve a party from the effect of a
19 judgment or order "for the following reasons: (1) mistake, inadvertence, surprise or
20 excusable neglect; (2) newly discovered evidence that, with reasonable diligence,
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1 could not have been discovered in time to move for a new trial under Rule 59(b);
2 (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or
3 misconduct by an opposing party; ... or (6) any other reason that justifies relief.”
4 Fed.R.Civ.Proc. 60(b). The district court exercises discretion in granting or
5 denying a motion for reconsideration. *See Sch. Dist. No. 1J v. ACandS, Inc.*, 5
6 F.3d 1255, 1262 (9th Cir.1993).

9 Defendant argues that the government did not meet its burden in opposing
10 the suppression motion because there was no evidentiary hearing, and Defendant
11 did not stipulate to the police reports submitted as exhibits to the Defendant’s and
12 Government’s briefing on the motion to suppress. These are the same arguments
13 that the Court addressed in its order where it noted that an evidentiary hearing is
14 required for a suppression motion only where the moving papers filed in
15 connection with the pretrial suppression motion show that there are contested facts
16 relating to the lawfulness of a search. *United States v. Walczak*, 783 F.2d 852, 857
17 (9th Cir. 1986). Stipulation or not, Defendant did not, and still has not, shown how
18 any of the facts related to the suppression motion are contested or would be
19 elucidated by an evidentiary hearing. “A[n] [evidentiary] hearing is not required if
20 the grounds for suppression consist solely of conclusory allegations of illegality.”
21 *United States v. Licavoli*, 604 F.2d 613, 621 (9th Cir.1979), *cert. denied*, 446 U.S.
22 935 (1980).

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Defendant does not show error in the prior ruling, mistake or excusable neglect on the part of any party, or new facts or legal authority that could not have been brought to the attention of the Court earlier with reasonable diligence. The Court, therefore, finds no basis to reconsider or modify its prior order.

Accordingly, IT IS SO ORDERED:

1. The Defendant's Motion for Reconsideration, ECF No. 44, is

DENIED.

The District Court Executive is directed to enter this Order and provide copies to counsel.

DATED this 29th day of August, 2011.

s/ Rosanna Malouf Peterson

ROSANNA MALOUF PETERSON
Chief United States District Court Judge